

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In re: Petition of City of Cambridge

D.T.E. 04-65

ANSWER OF RESPONDENT CAMBRIDGE ELECTRIC LIGHT COMPANY

Now comes the Respondent, Cambridge Electric Light Company, d/b/a NSTAR Electric, in answer to the Allegations contained in the Petition of City of Cambridge (the "Petitioner" or the "City") filed on June 21, 2004, in the above-referenced proceeding, stating as follows:

1. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Petition.
2. The allegation contained in paragraph 2 of the Petition calls for a legal conclusion, and therefore, the Respondent is not required to admit or deny the allegation. Nonetheless, the Respondent answers further that it does not dispute the jurisdiction of the Department of Telecommunications and Energy (the "Department") to resolve disputes that may arise relating to the provisions of G.L. c. 164, § 34A.
3. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Petition. Without limiting the foregoing, the Respondent acknowledges receipt of the Petition.

4. With respect to the allegations contained in paragraph 5 of the Petition, the Company admits that it met on numerous occasions with the Petitioner to negotiate issues relating to the license agreement, the purchase and sale agreement and the purchase price of streetlights located in the City.
5. The Respondent denies the allegation in paragraph 6 of the Petition. The Company's methodology for determining the purchase price of streetlights, in theory, may assign either positive or negative values to streetlights, depending on the total level of accumulated depreciation relating to its streetlighting accounts.
6. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Petition.
7. Regarding paragraph 8 of the Petition, the Respondent denies the allegation that its methodology to determine a purchase price for streetlights in the City "does not allow" older streetlight equipment to have a negative value (see also Respondent's Answer to Petitioner's paragraph 6, above). The Respondent admits that it believes that the purchase price for all of the streetlights that would be available for purchase by the City is approximately \$1.7 million, based on the Company's accounts as of December 31, 2003.
8. The Respondent admits that the allegations in paragraph 9 of the Petition are accurate. The referenced document reflects the Company's accounts as of December 31, 2003.

9. The Respondent admits that the allegations in paragraph 10 of the Petition are accurate. The referenced document reflects the Company's accounts as of December 31, 2003.
10. The Respondent admits that the allegations in paragraph 11 of the Petition are accurate.
11. The Respondent is unclear on the City's position regarding the purchase of streetlights in Cambridge; thus, the Respondent is not in a position to admit or deny the allegations set forth in paragraph 12 of the Petition. Without limiting the generality of the foregoing, during the course of negotiations, the City has been inconsistent as to whether it intends to purchase all municipal streetlights in the City or only a portion of the streetlights. Further, the City has not definitively indicated whether, to the extent it intends to purchase only a portion of the streetlights, it wants the remaining streetlights to be removed or maintained in service for the benefit of the City. Because all of these issues affect the value determination under G.L. c. 164, § 34A, the Respondent is unclear as to the Petitioner's allegations and the relief it ultimately seeks in this proceeding.
12. For the reasons articulated in paragraph 11, above, the Respondent can neither admit nor deny the allegations in paragraph 13 of the Petition.
13. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Petition.
14. The Respondent denies the allegations in paragraph 15 of the Petition.

15. The allegation contained in paragraph 16 of the Petition calls for a legal conclusion, and therefore, the Respondent is not required to admit or deny the allegation.
16. The Respondent admits the allegations in paragraph 17 of the Petition.
17. The allegation contained in paragraph 18 of the Petition calls for a legal conclusion, and therefore, the Respondent is not required to admit or deny the allegation. Without limiting the generality of the foregoing, the Respondent denies the allegations in paragraph 18 of the Petition. The Respondent believes that the Petitioner's issue regarding liability pursuant to G.L. c. 258 is non-existent, because the Respondent's proposed License Agreement states that the licensee "shall to the full extent allowed by law, defend, indemnify and save harmless" the Respondent against and from any and all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses arising from or in connection with any of the Petitioner's obligations under the License Agreement. Accordingly, by agreeing to be bound by the above-referenced language, the Petitioner would be accepting liability only to the extent allowed by law, thus making an interpretation of G.L. c. 258 for purposes of negotiating the License Agreement unnecessary.
18. The Respondent admits the allegation in paragraph 19 of the Petition.
19. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Petition. However, without limiting the foregoing, the Respondent asserts that the Department has no precedent directly on point regarding the issues relating to the Petitioner's

allegations in its Petition.

20. The Respondent denies the allegation in paragraph 21 of the Petition. Subsequent to the April 21 meeting at the Department noted in the Petition, the Respondent continued to discuss issues informally with the Petitioner regarding the purchase of streetlights in the City of Cambridge, with the hope of arriving at a resolution of such issues, without the need for the Department's formal participation in resolving issues regarding such discussions.
21. The Respondent admits the allegation in paragraph 22 of the Petition.
22. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Petition.
23. The allegation contained in paragraph 24 of the Petition calls for a legal conclusion, and therefore, the Respondent is not required to admit or deny the allegation.
24. The allegation contained in paragraph 25 of the Petition calls for a legal conclusion, and therefore, the Respondent is not required to admit or deny the allegation.
25. The allegation contained in paragraph 26 of the Petition calls for a legal conclusion, and therefore, the Respondent is not required to admit or deny the allegation.

RESPONSE TO PETITIONER'S REQUESTS FOR RELIEF

26. The Petitioner's requests for relief do not require the Respondent to admit or deny factual allegations. However, in response to such requests for relief, the

Respondent disagrees with the Petitioner regarding the necessity of adjudicatory hearings to resolve the Petitioner's allegations. The Petitioner has raised questions of fact that require resolution by the Department after a full evidentiary hearing, wherein the parties are allowed to present witnesses regarding the Company's methodology for determining accumulated depreciation relating to streetlights in the City that are eligible for purchase pursuant to G.L. c. 164, § 34A. The Respondent requests such an evidentiary hearing pursuant to 220 C.M.R. § 1.06(1).

27. The Respondent is entitled to an adjudicatory hearing regarding the Petition because the Petitioner's legal rights are at issue in this proceeding, consistent with the provisions of G.L. c. 30A. The Department defines the term "adjudicatory proceeding" consistent with G.L. c. 30A, § 1(1), which states that:

"Adjudicatory proceeding" means a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing.

28. This proceeding meets the definition of an "adjudicatory proceeding" under G.L. c. 30A, § 1(1) because the legal rights of the Company are required by law to be determined after an opportunity for an agency hearing. The legal rights at issue in this proceeding are related to the Company's property rights. The Company's property rights are protected by both Article XIV of the United States Constitution and Article X of the Massachusetts Constitution. The Supreme Judicial Court has recognized the existence of a constitutional right to a hearing in instances where administrative decisions directly affected the personal rights,

property, or economic interests of the applicant. See Cella, Administrative Law and Practice § 1759, quoting Milligan v. Board of Registration in Pharmacy, 348 Mass. 491 (1965) and Marmer v. Board of Registration of Chiropractors, 358 Mass. 13 (1970).

29. The Petitioner is requesting that the Department establish a price for Respondent's streetlights, which are required by law to be transferred to the Petitioner upon the Petitioner's request and the payment by the Petitioner of compensation relating thereto. To the extent that the Department issued an order in this proceeding that directed the Company to price its streetlights for less than their unamortized book value, without the opportunity for an evidentiary hearing, the Department would have denied the Company its property rights without due process of law. See Boston Gas Company v. Department of Public Utilities, 368 Mass. 51, 54 (1975). The Department will be determining the property rights of the Respondent in this proceeding to the extent that a Department ruling relates to: (1) the methodology used by the Respondent to determine its prices for streetlights sold to municipalities; (2) the price paid for such streetlights; and (3) the streetlight investment-related costs remaining on the Respondent's books subject to recovery from the Respondent's remaining customers. Therefore, consistent with the provisions of G.L. c. 30A, the Respondent's legal rights are at issue in this proceeding and warrant the establishment of a full adjudicatory process in order to rule on the Petition.
30. Moreover, the provisions of G.L. c. 164, § 34A that are the subject of this proceeding were enacted as part of St. 1997, c. 164, the Electric Restructuring Act

of 1997 (the "Act"), which established a comprehensive set of structural changes in the electric industry, of which the requirement for the sale of municipal streetlighting is only one aspect. In establishing analogous dispute-resolution requirements, the Legislature made it clear that such proceedings required the opportunity for a formal adjudicatory hearing process. The Act authorizes and directs the Department to establish rules and regulations to:

- (1) promote effective competition; (ii) investigate disputes;
- (iii) institute a complaint mechanism for the resolution of disputes...; (iv) ...hear such disputes in the first instance at an informal level and, if requested, at a formal hearing before the Department...

St. 1997, c. 164, § 193 (codified at G.L. c. 164, § 1F(3) (emphasis added)).

Accordingly, if informal dispute-resolution attempts do not succeed, the statutory mandate for the institution of a formal hearing process is clearly contemplated and provided for in the Act.

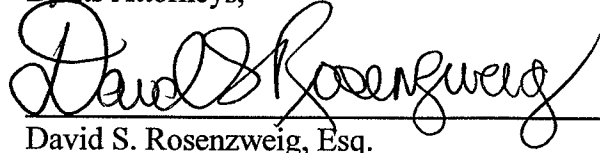
WHEREFORE, the Respondent requests that the Department:

1. Deny the relief requested by the Petitioners; and
2. Grant such other relief as the Department deems necessary and appropriate.

Respectfully submitted,

**CAMBRIDGE ELECTRIC LIGHT
COMPANY**

By Its Attorneys,

A handwritten signature in black ink, appearing to read "David S. Rosenzweig", written over a horizontal line.

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Dated: June 30, 2004